

## Appendix B

### **THE SOUTH ASIA DECLARATION ON REFUGEES Adopted by the Eminent Persons Group (EPG) on Refugee and Migratory Movements in South Asia in January 2004**

*The Regional Consultation on Refugee and Migratory Movements in South Asia was initiated by the former United Nations High Commissioner for Refugees Mrs. Sadako Ogata in 1994. The purpose was to provide a forum for discussing refugee issues at the South Asia regional level so as to come up with strategies and common approaches for strengthening refugee protection and intensifying the search for durable solutions. Eminent persons were approached in Bangladesh, India, Nepal, Pakistan and Sri Lanka – who became members of a group (the Eminent Persons Group or EPG) tasked with leading the forum forward in the debate on refugees.*

*At the Seventh Informal Regional Consultation of the EPG in New Delhi 15 – 16 December 2002, the EPG concluded that it was necessary to have a Declaration that would serve as a platform for reinforcing refugee protection principles and reiterating the need for states to enact national refugee legislation. The Declaration will provide a harmonised approach to refugee protection for the region.*

#### **DECLARATION**

##### ***Preamble***

##### **Recognising that**

Countries in the South Asia region, with their porous borders, experience mixed flows of populations across borders including refugees in need of protection.

States in South Asia have been hospitable towards refugees and continue to offer protection and assistance to large numbers of refugees.

Countries in South Asia are also faced with internally displaced persons due to internal conflict, human rights violations and other forms of violence.

Despite the magnitude of refugee movements, none of the South Asian countries are signatories to the 1951 Convention Relating to the Status of Refugees or the 1967 Protocol, nor do they have any national refugee legislation or any regional instrument specific to refugees.

The absence of comprehensive regional strategies for resolving issues of forced displacement has resulted in the lack of a harmonised regional approach to these issues.

Issues of illegal migration continue to be a cause of serious concern for receiving states and require to be addressed differently than refugee situations.

The absence of a national legal framework for dealing with refugees in countries in the region gives rise to disparities in the treatment of refugees as well as to uncertainties in approaches to refugee problems, and risks arbitrariness in dealing with refugees.

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol remains central to international protection of refugees and may be supplemented by regional instruments that address specificities of refugee situations in the regions concerned.

The granting of asylum by a state to refugees is a nonpolitical act and should not be considered an unfriendly act. It is humanitarian in nature, with a foundation in international law, and should be respected by all states. International refugee law provides tools to exclude persons who do not deserve international protection due to serious non-political criminal acts, or acts against humanity or peace.

The EPG has formulated a model national refugee law that is meant to provide guidance to states in dealing with asylum seekers and refugees and their treatment, and in enacting national refugee laws.

#### **RECOMMENDS TO STATES IN SOUTH ASIA:**

To continue to respect the principles and procedures contained in the model national law on refugees adopted by the South Asian EPG in Dhaka in November 1997, which are as follows:

##### **1. Purpose of the Act**

The purpose of this Act is to establish a procedure for granting of refugee status to asylum seekers, to guarantee to them fair treatment, and to establish the requisite machinery therefore. For the purposes of this Act the grant of refugee status shall be considered a peaceful and humanitarian act, shall not be regarded as an unfriendly act and does not imply any judgement on the country of origin of the refugee.

##### **2. Terminology**

In this Act, unless the context otherwise requires:

I 'Asylum seeker' means a foreigner who seeks recognition and protection as a refugee.

II 'Refugee' means a 'refugee' defined in Section 4 and includes dependants of persons determined to be refugees.

III 'Country of origin' means the refugee's country of nationality, or if he or she has no nationality, his or her country of former habitual residence.

IV 'Commissioner' means the 'Commissioner for Refugees', an executive officer, referred to in Section 8 of this Act.

V 'Refugee Committee' means the 'Committee' established as an appellate authority by the Government under Section 8 of this Act.

### **3. Non-Obstante Clause**

The provisions of this Act shall have effect notwithstanding the provisions of any other law including *The Foreigners Act*.

### **4. Definition of Refugee**

A refugee is:

- a. any person who is outside his or her country of origin, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of a well-founded fear of persecution on account of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion,<sup>1</sup> or,
- b. any person who owing to external aggression, occupation, foreign domination, serious violation of human rights or other events seriously disrupting public order in either part or whole of his or her country of origin, is compelled to leave his or her place of habitual residence in order to seek refuge in another place outside his or her country of origin.<sup>2</sup>

### **5. Persons who shall be excluded from refugee status**

A person shall be excluded from refugee status for the purpose of this Act if:

- a. he or she has committed a crime against peace, a war crime or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- b. he or she has committed a serious nonpolitical crime outside the country of asylum prior to his or her admission into this country as a refugee.<sup>3</sup>

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<sup>1</sup> This part of the definition is based on Article I (A) (2) of the 1951 Convention on Refugees, which has universal approval for the refugee definition. However, taking note of the fact today's conflicts are linked to inter-ethnic violence also, ethnic identity is added in the definition as given in the 1951 Convention on Refugees. It is. Also understood that membership of a particular social group includes gender-based persecution.

<sup>2</sup> This part of the definition is based on a broader definition incorporated in Article 1 (2) of the 1969 OAU Convention. Remembering that promotion of human rights throughout the world is one of the purposes of the United Nations, and realising that in practice there are massive violations of human rights in many parts of the world, and also finding that the Cartagena Declaration on Refugees in 1984 incorporates massive violation of human rights as a ground for treating asylum seekers as refugees, the same is incorporated in this part of the definition.

<sup>3</sup> This provision does not mean that persons having committed political crimes are automatically to be considered as refugees. On the contrary, when there are serious reasons to believe that the asylum-seeker has committed a politically motivated crime to

## **6. Principle of *Non-Refoulement***

- a. No refugee or asylum seeker shall be expelled or returned in any manner whatsoever to a place where there are reasons to believe his or her life or freedom would be threatened on account of any of the reasons set out in subsections (a) or (b) of Section 4.
- b. The benefit of the present provision may not, however, be claimed by a refugee or asylum seeker where there are reasonable grounds for regarding him or her as a danger to the security Of the country or who has been convicted by a final judgement of a serious crime and constitutes a danger to the community.

## **7. Application**

- a. Where an asylum seeker requests to be recognised as a refugee either at the point of entry or subsequently, the country concerned shall act in accordance with the principle laid down in Section 6 and refer the case to the Commissioner of Refugees for disposal.
- b. Where an application is made by an asylum seeker for determination of his or her status as a refugee, pending determination of such status, no restrictions shall be imposed on the asylum seeker save and except those that are necessary in the interests of sovereignty and integrity of the State or public order.

## **8. Constitution of the Authorities**

In order to implement the provisions of this Act the Government shall appoint:

- i. Commissioners for Refugees; and
- ii. A Refugee Committee as the Appellate authority.

## **9.**

- a. A Commissioner for Refugees shall receive and consider applications for refugee status and make decisions.
- b. The Commissioners for Refugees shall be of a rank not less than that of an Administrative Head of a District.

## **10.**

- a. The Refugee Committee shall be the appellate authority and receive and consider applications for refugee status *suo moto*, or those made by the asylum seekers in appeal against the decision of the Commissioner.
- b. The Refugee Committee shall consist of the following three members:
  - i. a sitting or retired High Court Judge designated by the Government in consultation with the Chief Justice of the Supreme Court as Chairperson,

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endanger the right to life or physical integrity of another person, this asylum-seeker would normally not be recognised as a refugee, unless the punishment for such crime is expected to be discriminatory or disproportionate.

- ii. two independent members conversant with refugee matters.

### **11. Finality of Order**

Every order of the Refugee Committee shall be final.

### **12. Determination of Refugee Status<sup>4</sup>**

- a. An asylum seeker who wishes to claim refugee status under the terms of this Act shall be heard by a Commissioner for Refugees before the determination of his or her status.
- b. During the Refugee determination interview, the asylum seeker shall be given necessary facilities including the services of a competent interpreter where required, and a reasonable opportunity to present evidence in support of his or her case.
- c. The asylum seeker, if he or she wishes, shall be given an opportunity, of which he or she should be duly informed, to contact a representative of UNHCR.
- d. The asylum seeker, if he or she wishes, shall be entitled to be assisted in the determination of the status by a person of his or her choice including a legal practitioner.
- e. Where an application by the asylum seeker is rejected, the Commissioner for Refugees shall give reasons for the order in writing and furnish a copy of it to the asylum seeker.
- f. If the asylum seeker is not recognised as a refugee, he or she could be given a reasonable time to appeal to the Refugee Committee as the appellate authority for reconsideration of decision.
- g. If the asylum seeker is recognised as a refugee, he or she shall be informed accordingly and issued with documentation certifying his or her refugee status.

### **13. Persons who shall Cease to be Refugees**

A person shall cease to be a refugee for the purpose of this Act if:

- a. he or she voluntarily re-avails himself or herself of the protection of the country of his or her origin; or
- b. he or she has become a citizen of the country of asylum; or
- c. he or she has acquired the nationality of some other country and enjoys the protection of that country, or
- d. he or she has voluntarily re-established himself or herself in the country which he or she left or outside which he or she remained owing to fear of persecution; or
- e. he or she can no longer, because the circumstances in connection with which he or she was recognised as a refugee have ceased to exist, continue to refuse to avail himself or herself of the protection of the country of his or her nationality.

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<sup>4</sup> This Article is based on UNHCR ExCom Conclusion No. 8(XXVIII)-1977 on 'Determination of Refugee Status'.

#### **14. Rights and Duties of Refugees**

- a. Every refugee so long as he or she remains within this country, shall have the right to:
  - i. fair and due treatment, without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion.
  - ii. receive the same treatment as is generally accorded to 'aliens under 'the Constitution or any other laws and privileges as may be granted by the Central or State Governments.
  - iii. receive sympathetic consideration by the country of asylum with a view to ensuring basic human entitlements.
  - iv. be given special consideration to their protection and material well-being In the case of refugee women and children.
  - v. choose his or her place of residence and move freely within the territory of the country of asylum, subject to any regulations applicable to aliens generally in the same circumstances.
  - vi. be issued identity documents.
  - vii. be issued travel documents for the purpose of travel outside and back to the territory of the country of asylum unless compelling reasons of national security or public order otherwise require.
- b. Every refugee shall be bound by the laws and regulations of the country of asylum.

#### **15. Situations of Mass Influx**

- a. The Government may, in appropriate cases where there is large-scale influx of asylum seekers, issue an order permitting them to reside in the country without requiring their individual status to be determined under Section 12 of this Act, until such time as the reasons for departure from the country of origin have ceased to exist, or the government decides that their status should be determined on an individual basis under this Act.
- b. In the case of asylum seekers who have been permitted to reside in the country under this provision, they may be subject to reasonable restrictions with respect to their location and movement, but will otherwise be granted normally the same rights as refugees under this Act.

#### **16. Refugees Unlawfully in the Country of Refuge**

The Government shall not impose penalties, on account of their illegal entry, or presence, on refugees who, coming directly from a place where their life or freedom was threatened in the sense of Section 4, enter or are present in the country of asylum without authorisation, provided they

present themselves without delay to the authorities and show good cause for their illegal entry or presence.

### **17. Voluntary Repatriation<sup>5</sup>**

The repatriation of refugees shall take place at their free volition expressed in writing or other appropriate means which must be clearly expressed. The voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of safety to the country of origin shall be respected.

### **18. Rules and regulations**

The Government may frame rules and regulations, from time to time, to give effect to the provisions of this Act.

To continue to respect the principle of *non-refoulement*, which includes admission of genuine and bonafide asylum seekers and refugees at borders.

To continue to have a flexible approach in the event of a large-scale refugee influx to ensure that temporary protection be provided at the very least.

To continue their commitment to host and assist refugees who remain in their territory, including through registration and the granting of lawful status, provided they do not pose any danger to the security of the state.

To accede to the 1951 Convention Relating to the Status of Refugees and/or the 1967 Protocol.

To enact national refugee legislation based on the model law (referred to in the first recommendation), which mechanisms can be established to identify refugees from among mixed population flows and which makes provision for ensuring the basic rights of refugees.

To be liberal, as far as possible, in permitting refugees to work and to become self-reliant.

That pending the establishment of state mechanisms for refugee status determination and state structures for their protection, the role of UNHCR in this regard is respected and facilitated.

To endeavour to seek durable solutions for refugees, especially for those who remain in protracted situations.

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<sup>5</sup> This provision is derived from UNHCR ExCom Conclusion 40 (XXXVI)-1985 on 'Voluntary Repatriation', at para (b).

To respect a refugee's right to repatriate to their country of origin, or to their previous place of habitual residence.

To continue to protect internally displaced persons, assisting them and seeking durable solutions to their plight in collaboration with international and national agencies.

**RECOMMENDS TO UNHCR:**

To continue its activities under its mandate and, in cooperation with governments, to protect refugees and find a durable solution for them.

To continue to support the requesting governments to address the needs of internally displaced persons.

To encourage states in South Asia to address and to seek solutions to refugee situations, with guidance from the Agenda for Protection adopted by the Executive Committee of UNHCR in 2002.

To monitor the implementation of this declaration.

***The following delegates adopted the Declaration. The consent of the Indian EPG was secured through electronic and telephonic means.***

**Bangladesh**

*Mr. Faruq A. Choudhury*, Adviser BRAC, Former Foreign Secretary  
*Dr. Chowdhury Rafiqul Abrar*, Coordinator, Refugee and Migratory Movements Research Unit, Dhaka University

**Pakistan**

*Justice (Retd) Nasim Hassan Shah*, Former Chief Justice  
*Dr. Muhammad Azam Chaudhry*, Senior Partner, Azam Chaudhry Law Associates  
*Professor Ijaz Hussain*, Department of International Relations, Quaid-e-Azam University, Islamabad  
*Professor Syed Sikandar Mehdi*, Department of International Relations, University of Karachi

**Sri Lanka**

*Hon. Sri Wijeratne*, Member, Constitutional Council, Chairman Legal Aid Foundation

**Nepal**

*Justice (Retd) Vishwanath Upadhyay*, Former Chief Justice Supreme Court  
*Mr. Yadav Kant Silwal*, Former Secretary General, SAARC  
*Mr. Daman Nath Dhungana*, Former Speaker House of Representatives